

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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THOMAS M. GOULD
CLERK U.S. DISTRICT COURT
WD OF TN MEMPHIS

EDWARD SMITH, as Conservator)
of SUE NELL SMITH, an)
incapacitated person)
)
Plaintiff,)
)
vs.) No. 05-02106 BV
)
KINDRED NURSING CENTER LIMITED)
PARTNERSHIP d/b/a Cordova)
Rehabilitation and Nursing)
Center; KINDRED HEALTHCARE)
SERVICES, INC.; and KINDRED)
HEALTHCARE OPERATING, INC.;)
NEICIE J. MCKINION, in her)
capacity as Administrator of)
Cordova Rehabilitation and)
Nursing Center; KATHERINE A.)
BERRY, her capacity as)
Administrator of Cordova)
Rehabilitation and Nursing)
Center; FRANK D. LAMIER, in)
his capacity as Administrator)
of Cordova Rehabilitation and)
Nursing Center; JAMES W.)
FREEMAN, in his capacity as)
Administrator of Cordova)
Rehabilitation and Nursing)
Center,)
)
Defendants.)

ORDER GRANTING DEFENDANT'S MOTION FOR PROTECTIVE ORDER

Before the court is the August 15, 2005 motion of the defendants, Kindred Nursing Centers Limited Partnership, et al. ("Kindred"), pursuant to Federal Rule of Civil Procedure 26(c)(1),

This document entered on the docket sheet in compliance
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requesting that the court enter a protective order providing that discovery not be had from individual defendants, Katherine A. Bennett, Neicie J. McKinion, Frank D. Lamier, and James W. Freeman. This motion was referred to the United States Magistrate for determination. For the following reasons, the motion is granted.

BACKGROUND

On March 4, 2005, the plaintiff, Edward Smith, filed a motion for remand to state court. The motion to remand is currently pending before the court. In that motion, Smith contends that the joinder of the individual Administrator defendants destroys the completeness of diversity of citizenship among the parties and the court thus lacked subject matter jurisdiction. On March 22, 2005, Kindred filed a response opposing the motion for remand arguing that the individual defendants were fraudulently joined because the complaint states no cause of action against them.

On July 15, 2005, Smith served his first set of interrogatories and requests for production of documents on each of the four individual defendants. Thereafter, on August 15, 2005, Kindred filed this motion for protective order.

ANALYSIS

Federal Rule of Civil Procedure 26(c)(1) permits the court to issue a protective order prohibiting discovery. The rule allows the court to "make any order which justice requires to protect a

party or person from annoyance, embarrassment, oppression, or undue burden or expense . . ." Fed. R. Civ. P. 26(c).

Kindred contends that regardless of the disposition of the motion to remand and the motion to dismiss the individual defendants, discovery from the individual defendants should not be had at this time. If the court finds that the individual defendants were not fraudulently joined, then the case will be remanded to the state court. An order remanding this case to state court would effectively deprive this court of jurisdiction to order discovery. Alternatively, if the court finds that the individual defendants were fraudulently joined and refuses to remand the case, then the individuals would no longer be parties subject to the discovery rules.

Consequently, any discovery requested from individuals who will either not be parties to this lawsuit or who will not be under the jurisdiction of this court would be wasteful, annoying, oppressive, and unduly burdensome and expensive.

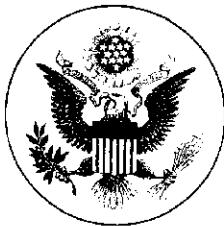
Furthermore, the plaintiff has no objection to Kindred's motion for protective order. Indeed, the plaintiff has previously requested that the court stay this matter pending resolution of his motion for remand.

Accordingly, Kindred's motion for protective order is granted. Smith shall not have discovery from Katherine Bennett, Niecie J.

McKinion, James W. Freeman, or Frank D. Lamier until resolution of
the pending motion to remand.

IT IS SO ORDERED this 16th day of August, 2005.

Diane K. Vescovo
DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE



Notice of Distribution

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Honorable J. Breen
US DISTRICT COURT